



(BILLING CODE 3510-P)

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-912]

Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review and Final Rescission, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On October 7, 2011, the Department of Commerce ("Department") published the preliminary results of the 2009-2010 administrative review of the antidumping duty order on certain new pneumatic off-the-road tires ("OTR tires") from the People's Republic of China ("PRC").¹ The period of review ("POR") is September 1, 2009, through August 31, 2010. This review covers one exporter: Tianjin United Tire & Rubber International Co., Ltd. ("TUTRIC").

We invited interested parties to comment on our *Preliminary Results*. Based on our analysis of the comments received, we made certain changes to our margin calculations for TUTRIC. The final dumping margins for this review are listed in the "Final Results Margins" section below.

EFFECTIVE DATE: [insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Raquel Silva or Wendy Frankel, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S.

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Background

¹ See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of the 2009-2010 Antidumping Duty Administrative Review and Intent To Rescind, in Part*, 76 FR 62356 (October 7, 2011) ("Preliminary Results").

On October 7, 2011, the Department published its *Preliminary Results* of the antidumping duty administrative review of OTR tires from the PRC. On October 21, 2011, TUTRIC submitted its response to the Department's October 17, 2011, post-preliminary supplemental questionnaire.

Titan Tire Corporation ("Titan"), the petitioner; and TUTRIC each submitted publicly available information regarding surrogate values on October 27, 2011; Bridgestone Americas, Inc. and Bridgestone Americas Tire Operations, LLC (collectively, "Bridgestone"), domestic interested parties, did so on October 28, 2011. On November 7, 2011, TUTRIC submitted rebuttal surrogate value information.

Titan and Bridgestone submitted their case briefs on November 17, and November 18, 2011, respectively. On November 30, 2011, TUTRIC submitted its rebuttal brief.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, titled, "Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2009-2010 Second Administrative Review of the Antidumping Duty Order," dated February 21, 2012 ("Issues and Decision Memorandum"), which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum follows as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA

ACCESS is available in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at <http://www.trade.gov/ia/>. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Period of Review

The POR is September 1, 2009, through August 31, 2010.

Scope of the Order

The products covered by the order are new pneumatic tires designed for off-the-road and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) agricultural and forestry vehicles and equipment, including agricultural tractors,² combine harvesters,³ agricultural high clearance sprayers,⁴ industrial tractors,⁵ log-skidders,⁶ agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;⁷ (2) construction vehicles and equipment, including earthmover articulated dump

² Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.

³ Combine harvesters are used to harvest crops such as corn or wheat.

⁴ Agricultural sprayers are used to irrigate agricultural fields

⁵ Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.

⁶ A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

⁷ Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

products, rigid frame haul trucks,⁸ front end loaders,⁹ dozers,¹⁰ lift trucks, straddle carriers,¹¹ graders,¹² mobile cranes,¹³ compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks. The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.*, tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the order range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type¹⁴ or

⁸ Haul trucks, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

⁹ Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.

¹⁰ A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, *etc.*, typically around construction sites. They can also be used to perform “rough grading” in road construction.

¹¹ A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

¹² A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform “finish grading.” Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course on to which asphalt or other paving material will be laid.

¹³ A counterbalanced lift truck is a rigid framed, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, *etc.*

¹⁴ While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise

tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol “DOT” must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix letter designations:

- P - Identifies a tire intended primarily for service on passenger cars;
- LT - Identifies a tire intended primarily for service on light trucks; and,
- ST - Identifies a special tire for trailers in highway service.

Suffix letter designations:

- TR - Identifies a tire for service on trucks, buses, and other vehicles with

and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

rim having specified rim diameter of nominal plus 0.156” or plus 0.250”;

- MH - Identifies tires for Mobile Homes;
- HC - Identifies a heavy duty tire designated for use on “HC” 15” tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.
- Example: 8R17.5 LT, 8R17.5 HC;
- LT - Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and
- MC - Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; tires of a kind designed for use on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications. Also excluded from the scope are radial and bias tires of a kind designed for use in mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

Final Rescission, in Part, of the Administrative Review

In the *Preliminary Results*, the Department stated its intent to rescind the review with respect to Weihai because the Department preliminarily determined that Weihai had no shipments of subject merchandise to the United States during the POR. *See Preliminary Results*,

76 FR at 62358. The Department did not receive any comments from interested parties with respect to rescinding the review for Weihai. Thus, we continue to find that Weihai had no shipments of subject merchandise to the United States during the POR. As such, we are rescinding this review with respect to Weihai in accordance with 19 CFR 351.213(d)(3).

Separate Rates

In proceedings involving non-market economy (“NME”) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department’s policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.¹⁵

In the *Preliminary Results*, we found that TUTRIC demonstrated its eligibility for separate-rate status. *See Preliminary Results*, 76 FR at 62358-59. No party has placed any evidence on the record of this review to contradict that finding. Therefore, we continue to find that TUTRIC is eligible for separate-rate status.

Changes Since the Preliminary Results

Based on an analysis of the comments received, for the final results, the Department has made the following changes to TUTRIC’s Margin Calculation:

- *Steam*: We have calculated the surrogate value for steam using a rupees-per-metric-ton unit of measure. Additionally, we applied partial adverse facts available (“AFA”) under sections 776(a)(2)(A) and (B) and 776(b) of the Tariff Act of 1930, as amended (the “Act”), to value

¹⁵ *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China*, 59 FR 22585 (May 2, 1994) and 19 CFR 351.107(d).

TUTRIC's steam consumption.¹⁶

- *NYCHFR and HCLOTH*: We have changed the HTS categories used to value Tyre cord B fabric ("NYCHFR") and harness cloth ("HCLOTH").¹⁷
- *Surrogate Financial Ratios*: We have corrected the classification of three line items in the surrogate financial ratio calculation.¹⁸
- *Domestic Brokerage and Handling*: We have revised the calculation of TUTRIC's surrogate brokerage and handling value using a revised container weight.¹⁹
- *Labor*: We have changed the source of data used to value labor costs and are using a source that contains data more specific to the product at issue here. Additionally, we have applied a monthly inflation methodology to inflate the value of labor.²⁰

Adverse Facts Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly

¹⁶ See Memorandum titled, "Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Surrogate Value Memorandum," dated February 6, 2012 ("Surrogate Value Memorandum"); *see also* Memorandum titled, "Analysis Memorandum for the Final Results: Tianjin United Tire & Rubber International Co., Ltd., dated February 6, 2012 ("TUTRIC Final Analysis Memorandum"); *see also* "Adverse Facts Available" section below and Comment 6 of the Issues and Decision Memorandum.

¹⁷ See Surrogate Value Memorandum and TUTRIC Final Analysis Memorandum.

¹⁸ See Surrogate Value Memorandum and TUTRIC Final Analysis Memorandum; *see also* Comment 7 of the Issues and Decision Memorandum.

¹⁹ See Surrogate Value Memorandum and TUTRIC Final Analysis Memorandum; *see also* Comment 10 of the Issues and Decision Memorandum.

²⁰ See Surrogate Value Memorandum and TUTRIC Final Analysis Memorandum; *see also* Comment 11 of the Issues and Decision Memorandum.

impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department “shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority” if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

For the reasons discussed below, we determine that, in accordance with sections 776(a)(2) and 776(b) of the Act, the use of partial AFA is appropriate for the final results with respect to TUTRIC’s consumption of steam.

Pursuant to section 776(e)(2)(A) and (B) of the Act, we find that TUTRIC failed to

provide requested information, and failed to provide information in the form and manner requested by the Department by the established deadlines on three separate occasions. In the original questionnaire issued on January 19, 2011, the Department requested that TUTRIC provide a discussion of how the company calculated its reported energy (steam) usage, and to also provide supporting worksheets. In its March 11, 2011, response, TUTRIC attached a worksheet demonstrating its final allocation of steam consumption to production-related activities and non-production related activities. However, TUTRIC did not provide a narrative explanation to support its calculations methodology or the calculation details as requested.

On June 9, 2011, the Department issued a supplemental questionnaire requesting that TUTRIC specifically provide a detailed narrative explanation of its steam consumption calculation. In its July 15, 2011, response, TUTRIC attached a revised worksheet that provided a worksheet detailing a series of generic formulas. However, in its supplemental questionnaire response, TUTRIC did not provide the calculations demonstrating how it applied these formulas or a narrative explanation of the calculation.

On August 16, 2011, in an additional supplemental questionnaire, the Department again specifically asked that TUTRIC provide a worksheet and a narrative explanation to demonstrate the calculation used to derive its allocation ratio. In a response dated September 2, 2011, TUTRIC referred the Department to its July 15, 2011, response. The Department notes that while the July 15, 2011, worksheet demonstrated TUTRIC's general allocation of factors of production ("FOP"), TUTRIC again did not provide the underlying calculation demonstrating how it derived the allocations or a narrative explanation.

Pursuant to section 776(a)(2)(A) of the Act, the Department finds that TUTRIC failed to provide essential information to support its reported steam consumption. Specifically, it failed to

provide a narrative explanation of its calculation methodology and failed to provide the actual calculations used in allocating steam consumption between production and non-production use as requested by the Department. Additionally, pursuant to section 776(a)(2)(B) of the Act, the Department finds that TUTRIC additionally failed to provide clarifying information in the manner requested by the Department. Consequently, the Department finds it necessary to apply partial facts available, as the necessary information is not available to determine the propriety of TUTRIC's derived allocation for steam consumption. Additionally, because TUTRIC had multiple opportunities but never provided the requisite information, we find that TUTRIC failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information concerning TUTRIC's steam consumption. For that reason, we determine that the application of an adverse inference pursuant to section 776(b) of the Act is warranted. Therefore, as partial AFA for these final results, the Department has applied TUTRIC's total consumption of the steam consumed during the POR as TUTRIC's production consumption quantity. *See* TUTRIC Final Analysis Memorandum.

Final Results Margins

We determine that the following weighted-average dumping margin exists for the period September 1, 2009, through August 31, 2010:

OTR tires from the PRC	
Exporter	Weighted-Average Margin
Tianjin United Tire & Rubber International Co., Ltd.	11.07%

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will

determine, and U.S. Customs and Border Protection (“CBP”) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, we calculated importer (or customer)-specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer (or customer)-specific assessment rate is *de minimis* (*i.e.*, less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer’s) entries of subject merchandise without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2). We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate of 210.48 percent. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: 1) for TUTRIC, the cash deposit rate will be the margin listed

above; 2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; 3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 210.48 percent determined in the less-than-fair-value investigation; and 4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

We are issuing and publishing the final results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

March 5, 2012
Date

Appendix I

- Comment 1: Valuation of Technically Specific Natural Rubber
- Comment 2: Whether to Use Certain MEP Prices
- Comment 3: Whether to Value Curing Bladders as FOPs or Overhead
- Comment 4: Which Coal Grades to Use in Valuing Steam Coal
- Comment 5: What Source to Use for Valuing Steam
- Comment 6: Whether to Modify TUTRIC's Steam Allocation Methodology
- Comment 7: Corrections to the Calculation of the Surrogate Financial Ratios
- Comment 8: How to Treat TUTRIC's Non-production Labor and Energy Costs
- Comment 9: Whether the Department Should Use a Different Source to Calculate Domestic Inland Truck Freight
- Comment 10: Whether to Revise the Calculation of Domestic Brokerage and Handling Expenses
- Comment 11: Whether the Department Should Use a Different Source and Inflation Period to Value Labor
- Comment 12: Whether to Deduct VAT from Export Price
- Comment 13: Whether to Use AFA to Value FOPs for "Similar" Models
- Comment 14: How to Treat Claims for Failed Tires
- Comment 15: Whether to Apply a "Targeting" Analysis if the Department Changes Its Zeroing Position

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